

CAIR Vacatur

On July 11, 2008, the U.S. Court of Appeals, For the District of Columbia Circuit, vacated (voided) the U.S. Environmental Protection Agency's (EPA) Clean Air Interstate Rule (CAIR). The purpose of CAIR was to reduce or eliminate the impact of power plant emissions on out-of-state downwind areas that do not meet the National Ambient Air Quality Standard for two pollutants associated with respiratory and cardiovascular problems - ozone and fine particulate matter (PM 2.5).

In the decision to nullify EPA's CAIR rule, the court noted that,

"We must vacate CAIR because very little will "survive () remand in anything approaching recognizable form." "EPA's approach—region wide caps with no state specific quantitative contribution determinations or emissions requirements—is fundamentally flawed. Moreover, EPA must redo its analysis from the ground up."

The Michigan DEQ Air Quality Division will be reviewing the impact of this decision on Air Quality programs and the Michigan State Implementation Plan, and will be in communication with EPA to assess needed steps to address the impacts.

The 2005 CAIR rule applied to 28 eastern states as well as the District of Columbia. It was issued by EPA as a remedy for a state's significant contribution to nonattainment air quality conditions in downwind states, and capped emissions of Nitrogen Oxides (NOx) and Sulfur Dioxide (SO₂) from electrical generating units and established a regional emissions trading program.

Additionally, the EPA adopted a Federal Implementation Plan (FIP) to establish the cap and trade program if the states failed to adopt the necessary legal authorities to cap emissions from their sources under CAIR. This was also vacated.